

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:

Lucas Sumitomo Brakes, Inc.
Lebanon, Ohio,

Respondent.

)
)
) Docket No. **CAA-5-99-015**
)
) Proceeding to Assess an
) Administrative Penalty
) under Section 113(d) of the
) Clean Air Act,
) 42 U.S.C. § 7413(d)
)

US
PROT
REC'D
JUN 30 1999
REGION 5
PROCEEDING

Administrative Complaint

1. This is an administrative action for the assessment of a civil penalty brought pursuant to Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d), and the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits", 40 C.F.R. Part 22.

2. The Complainant is, by lawful delegation, the Director of the Air and Radiation Division, United States Environmental Protection Agency (U.S. EPA), Region 5, Chicago, Illinois.

3. The Respondent is Lucas Sumitomo Brakes, Inc. (Lucas), a corporation doing business in the State of Ohio.

Statutory and Regulatory Background

4. Pursuant to Section 112(b) of the Clean Air Act, 42 U.S.C. § 7412(b), the U.S. EPA promulgated National Emission Standards for Hazardous Air Pollutants (NESHAPs) for Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks

(40 C.F.R. Part 63 Subpart N) on January 25, 1995. 60 F.R. 4963.

5. According to 40 C.F.R. § 63.340(a), the affected source to which the provisions of 40 C.F.R. Part 63 Subpart N apply is each chromium electroplating or chromium anodizing tank at facilities performing hard chromium electroplating, decorative chromium electroplating, or chromium anodizing.

6. According to 40 C.F.R. § 63.343(a)(1)(ii), the initial compliance date for the owner or operator of an existing affected source is no later than 2 years after January 25, 1995, if the affected source is a hard chromium electroplating tank.

7. According to 40 C.F.R. § 63.343(b)(1), the owner or operator of an affected source subject to the requirements of 40 C.F.R. Part 63 Subpart N is required to conduct an initial performance test as required at § 63.7.

8. According to 40 C.F.R. § 63.7(a)(2)(iii), the owner or operator of an affected source required to do performance testing under a relevant standard shall perform such test within 180 days after the compliance date specified in an applicable subpart of 40 C.F.R. Part 63 for an existing source subject to an emission standard established pursuant to section 112(d) of the Act.

9. According to 40 C.F.R. § 63.343(c), the owner or operator of an affected source subject to the emission limitations of 40 C.F.R. Part 63 Subpart N shall conduct monitoring according to the type of air pollution control

technique that is used to comply with the emission limitation.

10. According to 40 C.F.R. § 63.343(c)(2)(i), during the initial performance test, the owner or operator of an affected source complying with the emission limitations in 40 C.F.R. § 63.342 through the use of a packed-bed scrubber shall establish site-specific operating parameters for pressure drop across the system and velocity pressure at the common inlet of the control device which correspond to compliance with the applicable emission limitations using the procedures in 40 C.F.R. § 63.344(d)(4) and (5).

11. According to 40 C.F.R. § 63.343(c)(2)(ii), on and after the date on which the initial performance test is required to be completed under 40 C.F.R. § 63.7, the owner or operator of an affected source shall monitor and record the velocity pressure at the inlet to the packed-bed scrubber and the pressure drop across the scrubber once each day that any affected source is operating.

12. 40 C.F.R. § 63.343(c)(2)(ii) requires that the scrubber be operated within ± 10 percent of the velocity pressure value established during the initial performance test, and within ± 1 inch of water column of the pressure drop value established during the initial performance test.

13. According to 40 C.F.R. § 63.343(c)(5)(i), during the initial performance test, the owner or operator of an affected source complying with the emission limitations in

40 C.F.R. § 63.342 through the use of a wetting agent in the electroplating bath shall establish as the site-specific operating parameter the surface tension of the bath using Method 306B, appendix A of 40 C.F.R. Part 63.

14. 40 C.F.R. § 63.343(c)(5)(i) establishes the maximum compliant value of the surface tension of the electroplating bath to be the average value measured during the initial performance test.

15. According to 40 C.F.R. § 63.343(c)(5)(ii), on and after the date on which the initial performance test is required to be completed under § 63.7, the owner or operator of an affected source shall monitor the surface tension of the electroplating bath. The affected source must be operated at a surface tension less than the value established during the performance test.

16. According to 40 C.F.R. § 63.343(c)(5)(ii)(B), the surface tension must be monitored at least once every 40 hours of tank operation.

17. According to 40 C.F.R. § 63.346(b)(8), the owner or operator of an affected source subject to the provisions of 40 C.F.R. Part 63 Subpart N, shall maintain records of monitoring data required by 40 C.F.R. § 63.343(c).

18. According to 40 C.F.R. § 63.347(e)(1), a notification of compliance status report is required each time that an affected source becomes subject to the requirements of

40 C.F.R. Part 63 Subpart N.

19. According to 40 C.F.R. § 63.347(e)(2)(iv), the owner or operator of an affected source subject to the provisions of 40 C.F.R. Part 63 Subpart N shall include in the notification of compliance status report, the specific operating parameter value, or range of values, that corresponds to compliance with the applicable emissions limit for each monitored parameter for which a compliant value is to be established under § 63.343(c).

General Allegations

20. Respondent, Lucas, is a corporation doing business in the State of Ohio.

21. Lucas is a "person" as defined at 42 U.S.C. § 7602.

22. Lucas owns and operates a facility located at 1650 Kingsview Drive, Lebanon, Ohio, which includes one tank used for hard chromium electroplating.

23. Lucas began operating the hard chromium electroplating tank located at this facility prior to December 16, 1993, and therefore, the tank is considered an existing hard chromium electroplating tank according to 40 C.F.R. Part 63 Subpart N.

24. According to 40 C.F.R. § 63.343(b)(1), Lucas was required to conduct an initial performance test on this hard chromium electroplating tank by July 24, 1997.

25. The chromium emissions from the hard chromium electroplating tank at Lucas are controlled using both a "wetting

agent" and a "packed-bed scrubber" system as defined at 40 C.F.R. § 63.341.

26. On December 31, 1998, Stephen Rothblatt, Acting Director, Air and Radiation Division, Region 5, issued a Finding of Violation, pursuant to Section 113 of the Act, 42 U.S.C. § 7413, to Lucas, alleging violations of the Federal regulations set forth at 40 C.F.R. §§ 63.343(c)(2)(i), 63.343(c)(2)(ii), 63.343(c)(5)(ii)(B), 63.344(d)(4), 63.346(b)(8), and 63.347(e)(2)(iv).

27. Lucas was offered an opportunity to meet with the U.S. EPA to discuss the Finding of Violation. A conference was held on March 23, 1999, in U.S. EPA's Region 5 office in Chicago, Illinois.

28. The Attorney General of the United States has concurred with the determination of the Administrator of U.S. EPA, each through their respective delegates, that an administrative assessment of civil penalties is appropriate for the violations alleged in this Complaint.

Count I

29. Paragraphs 1 through 28 of this Complaint are incorporated by reference as if fully set forth in this paragraph.

30. According to 40 C.F.R. § 63.343(c)(2)(i), Lucas was required to establish as a site specific operating parameter the

velocity pressure at the common inlet to the packed-bed scrubber measured during the initial performance test.

31. According to 40 C.F.R § 63.343(c)(2)(ii), as of July 24, 1997, Lucas has been required to monitor the velocity pressure at the common inlet to the packed-bed scrubber each day that it operates its hard chromium electroplating tank.

32. Lucas^{Co.} did not install adequate equipment to monitor the velocity pressure at the common inlet to the packed-bed scrubber until March 5, 1998.

33. Lucas' failure to begin monitoring the velocity pressure at the common inlet to the packed-bed scrubber until March 5, 1998, is a violation of 40 C.F.R. § 63.343(c)(2)(i) and § 63.343(c)(2)(ii).

34. Lucas' violation of 40 C.F.R. § 63.343(c)(2)(i) and § 63.343(c)(2)(ii) subjects it to the assessment of a civil penalty according to Section 113(d) of the Act, 42 U.S.C. § 7413(d).

Count II

35. Paragraphs 1 through 28 of this Complaint are incorporated by reference as if fully set forth in this paragraph.

36. According to 40 C.F.R. § 63.343(c)(2)(i), Lucas was required to establish as a site specific operating parameter the pressure drop across the packed-bed scrubber during its initial

performance test.

37. During its initial performance test conducted on January 14, 1997, Lucas established its site specific value for the pressure drop across the packed-bed scrubber to be 1.5 inches of water column.

38. According to 40 C.F.R. § 63.343(c)(2)(ii), Lucas has been required to maintain the pressure drop across the packed-bed scrubber between 0.5 and 2.5 inches of water column as of July 24, 1997.

39. According to its monitoring records, Lucas failed to maintain the pressure drop across the packed-bed scrubber between 0.5 and 2.5 inches of water column on several occasions after July 24, 1997.

40. Lucas' failures to maintain the pressure drop across the packed-bed scrubber between 0.5 and 2.5 inches of water column after July 24, 1997, constitute violations of 40 C.F.R. § 63.343(c)(2)(ii).

41. Lucas' violations of 40 C.F.R. § 63.343(c)(2)(ii) subject it to the assessment of a civil penalty according to Section 113(d) of the Act, 42 U.S.C. § 7413(d).

Count III

42. Paragraphs 1 through 28 of this Complaint are incorporated by reference as if fully set forth in this paragraph.

43. According to 40 C.F.R. § 63.343(c)(5)(i), Lucas was required to establish as a site specific operating parameter the surface tension of the hard chromium electroplating tank bath during its initial performance test.

44. During its January 14, 1997, initial performance test, Lucas established its site specific value for the surface tension of the hard chromium electroplating tank bath as 41.05 dynes/cm.

45. According to 40 C.F.R. § 63.343(c)(5)(ii), Lucas has been required to maintain the surface tension of the hard chromium electroplating bath at or below 41.05 dynes/cm as of July 24, 1997.

46. According to its monitoring records, Lucas failed to maintain the surface tension of the hard chromium electroplating tank bath below 41.05 dynes/cm on several occasions after July 24, 1997.

47. Lucas' failures to maintain the surface tension of the hard chromium electroplating tank below 41.05 dynes/cm after July 24, 1997, constitute violations of 40 C.F.R. § 63.343(c)(5)(ii).

48. Lucas' violations of 40 C.F.R. § 63.343(c)(5)(ii) subject it to the assessment of a civil penalty according to Section 113(d) of the Act, 42 U.S.C. § 7413(d).

Count IV

49. Paragraphs 1 through 28 of this Complaint are

incorporated by reference as if fully set forth in this paragraph.

50. According to 40 C.F.R. § 63.343(c)(5)(ii)(B), Lucas has been required to monitor the surface tension of the hard chromium electroplating tank bath a minimum of once every 40 hours that the tank is in operation as of July 24, 1997.

51. According to its monitoring records, Lucas monitored the surface tension of the hard chromium electroplating tank bath less than once every 40 hours that the tank was in operation on several occasions after July 24, 1997.

52. Lucas' failures to monitor surface tension of the hard chromium electroplating tank bath a minimum of once every 40 hours that the tank was in operation after July 24, 1997, constitute violations of 40 C.F.R. § 63.343(c)(5)(ii)(B).

53. Lucas' violations of 40 C.F.R. § 63.343(c)(5)(ii)(B) subject it to the assessment of a civil penalty according to Section 113(d) of the Act, 42 U.S.C. § 7413(d).

Count V

54. Paragraphs 1 through 28 of this Complaint are incorporated by reference as if fully set forth in this paragraph.

55. According to 40 C.F.R. § 63.346(b)(8), Lucas has been required to maintain records of the monitoring of the pressure drop across the packed-bed scrubber and the velocity pressure at

the common inlet to the packed-bed scrubber as of July 24, 1997.

56. Lucas did not maintain records of the pressure drop across the scrubber system until November 5, 1997, and did not maintain records of the velocity pressure at the common inlet to the packed-bed scrubber until March 5, 1998.

57. Lucas' failure to maintain records of the pressure drop across the packed-bed scrubber and the velocity pressure at the common inlet to the packed-bed scrubber until after July 24, 1997, constitutes a violation of 40 C.F.R. § 63.346(b)(8).

58. Lucas' violation of 40 C.F.R. § 63.346(b)(8) subjects it to the assessment of a civil penalty according to Section 113(d) of the Act, 42 U.S.C. § 7413(d).

Count VI

59. Paragraphs 1 through 28 of this Complaint are incorporated by reference as if fully set forth in this paragraph.

60. According to 40 C.F.R. § 63.347(e)(1), Lucas was required to submit a notification of compliance status report.

61. According to 40 C.F.R. § 63.347(e)(2)(iv), Lucas was required to include the specific range of values for velocity pressure at the common inlet to the packed-bed scrubber which was established during the initial performance test.

62. Lucas did not include any values for the velocity

pressure at the common inlet to the packed-bed scrubber in its February 14, 1997, notification of compliance status report.

63. Lucas' failure to include a range of values for the velocity pressure at the common inlet to the packed-bed scrubber in its notification of compliance status report constitutes a violation of 40 C.F.R. § 63.347(e)(2)(iv).

64. Lucas' violation of 40 C.F.R. § 63.347(e)(2)(iv) subjects it to the assessment of a civil penalty according to Section 113(d) of the Act, 42 U.S.C. § 7413(d).

Notice of Proposed Order Assessing a Civil Penalty

65. According to Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19, the Administrator of U.S. EPA may assess a civil penalty not to exceed \$27,500 per day of violation up to a total of \$220,000 for violations of requirements under the Act that occurred on or after January 31, 1997.

66. Section 113(e)(1) of the Act, 42 U.S.C. § 7413(e)(1), requires the Administrator of U.S. EPA to take the following factors into consideration when determining the amount of any penalty assessment under Section 113:

- a. the size of Respondent's business;
- b. the economic impact of the proposed penalty on Respondent's business;
- c. Respondent's full compliance history and good faith efforts to comply;

- d. the duration of the violations alleged in the Complaint as established by any credible evidence;
- e. Respondent's payment of penalties previously assessed for the same violations;
- f. the economic benefit of noncompliance;
- g. the seriousness of the violations; and
- h. such other factors as justice may require.

67. Based upon the facts alleged in this Complaint and the factors in paragraph 66 above, Complainant proposes to assess a civil penalty against Respondent of \$30,000. Complainant calculated this proposed penalty pursuant to Section 113(e)(1) of the Act. In developing the proposed penalty, Complainant considered the facts and circumstances of this case with specific reference to U.S. EPA's Clean Air Act Stationary Source Penalty Policy, a copy of which is enclosed with this Complaint.

68. The Act requires that, when determining an appropriate penalty, U.S. EPA must consider the economic benefit a violator derives from the alleged violations. The penalty must be sufficient to preclude the violator from deriving monetary benefit due to its having avoided or delayed expenditures that would have ensured compliance with the Act, both for deterrence purposes and because other regulated entities have incurred similar expenses in maintaining compliance with the Act. Because the subject violations involved only nominal economic benefit to the Respondent, no economic benefit penalty component was

assessed.

69. In considering the seriousness of the violation, Complainant also considered the importance of the work practice, monitoring, recordkeeping, and reporting requirements to achieving the goals of the Act and its implementing regulations. These regulations are very important to the regulatory scheme of the Act because they are intended to limit the release of chromium, an extremely hazardous air pollutant. Accordingly, the proposed penalty includes a component corresponding to the importance of these violations to the regulatory scheme.

70. Pursuant to the Act, Complainant has considered the duration of the violations in assessing the actual or possible harm resulting from such violations. The violations commenced on July 24, 1997, and continued through March 5, 1998. Thus, Complainant based the penalty on a seven month duration of violations.

71. Pursuant to the Act, Complainant has considered the size of Respondent's business in determining the appropriate penalty. Respondent's net worth, as determined from a report prepared by the Dun & Bradstreet financial information service on August 24, 1998, is approximately \$ 24,107,910.00. Accordingly, the proposed penalty includes a component which is based on the size of Respondent's business.

72. In determining an appropriate civil penalty under the

Act, Complainant has considered Respondent's compliance history and its good faith efforts to comply. Because Complainant is aware of no prior citations against Respondent for violations of environmental statutes, Complainant has not enhanced the proposed penalty based on this factor.

73. Pursuant to the Act, Complainant has considered the economic impact of the penalty on Respondent's business. Based on the best information available to Complainant at this time, including the August 24, 1998, Dun & Bradstreet report, the proposed penalty of \$ 30,000 reflects a current presumption of Respondent's ability to pay the penalty and to continue in business.

74. Complainant developed the penalty proposed in this Complaint based on the best information available to U.S. EPA at this time. Complainant may adjust the proposed penalty if the Respondent establishes bonafide issues of ability to pay or other defenses relevant to the appropriateness of the penalty.

75. Respondent shall pay the proposed penalty by certified or cashier's check payable to "Treasurer, the United States of America", and shall deliver it, with a transmittal letter identifying the name of the case and docket number of this Complaint to:

U.S. Environmental Protection Agency
Region 5
P.O. Box 70753
Chicago, Illinois 60673

Respondent shall also include on the check the name of the case and the docket number. Respondent simultaneously shall send copies of the check and transmittal letter to:

Attn: Compliance Tracker, (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

and

Karen Peaceman, (C-14J)
Assistant Regional Counsel
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Opportunity to Request a Hearing

76. Section 113(d)(2) of the Act, 42 U.S.C. § 7413(d)(2), requires the Administrator of U.S. EPA to provide an opportunity to request a hearing to any person against whom the Administrator proposes to assess a penalty. Accordingly, you have the right to request a hearing to contest any material fact alleged in the Complaint and/or to contest the appropriateness of the amount of the proposed penalty. To request a hearing, you must specifically make the request in your Answer, as discussed in paragraphs 77 through 80 below. Any hearing which you request regarding the Complaint will be held and conducted in accordance with the provisions of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and

the Revocation or Suspension of Permits" (Consolidated Rules),
40 C.F.R. Part 22.

Answer

77. To avoid being found in default, you must file a written Answer to this Complaint with the Regional Hearing Clerk, (R-19J), U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, within 30 calendar days of your receipt of this Complaint. In computing any period of time allowed under this Complaint, the day of the event from which the designated period begins to run shall not be included. Saturdays, Sundays and Federal holidays shall be included, except when a time period expires on such, in which case the deadline shall be extended to the next business day.

78. Your Answer must clearly and directly admit, deny or explain each of the factual allegations contained in the Complaint, or must state clearly that you have no knowledge regarding a particular factual allegation which you cannot admit, deny or explain, in which case the allegation will be deemed denied.

79. Your Answer shall also state with specificity:

- a. the circumstances or arguments which you allege constitute grounds for defense;
- b. the facts that you intend to place at issue; and
- c. whether you request a hearing as discussed in paragraph 76 above.

80. Your failure to admit, deny or explain any material factual allegation in the Complaint will constitute an admission of the allegation. The Consolidated Rules provide that any hearing that shall be held will be a "hearing upon the issues raised by the complaint and answer."

81. You must send a copy of your Answer and of any documents subsequently filed in this action to Karen Peaceman, Assistant Regional Counsel (C-14J), U.S. EPA, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590. You may telephone Ms. Peaceman at (312) 353-5751.

82. If you fail to file a written Answer within 30 calendar days of your receipt of this Complaint, the Administrator of U.S. EPA may issue a Default Order according to 40 C.F.R. § 22.17(a). Issuance of a Default Order will constitute a binding admission of all allegations made in the Complaint and a waiver of your right to a hearing. The proposed penalty will become due and payable without further proceedings 60 days after the Default Order becomes the Final Order of the Administrator according to 40 C.F.R. § 22.27 or § 22.31.

Settlement Conference

83. Whether or not you request a hearing, you may request an informal conference to discuss the facts of this action and to arrive at a settlement. To request a settlement conference, write to Erik Hardin, Air Enforcement and Compliance Assurance

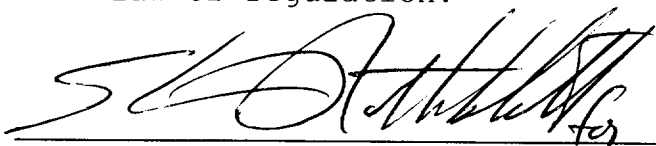
write to Erik Hardin, Air Enforcement and Compliance Assurance Branch (AE-17J), Air and Radiation Division, U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, or telephone Mr. Hardin at (312) 886-2402.

84. Your request for an informal settlement conference does not extend the 30 calendar day period during which you must submit a written Answer to this Complaint. You may pursue simultaneously the informal settlement conference and adjudicatory hearing processes. U.S. EPA encourages all parties facing civil penalties to pursue settlement through an informal conference. However, U.S. EPA will not reduce the penalty simply because the parties hold such a conference. Any settlement that the parties reach as a result of a conference will be embodied in a consent order. Your agreement to a consent order issued according to 40 C.F.R. § 22.27 will constitute a waiver of your right to request a hearing on any matter stipulated to therein.

Continuing Obligation to Comply

85. Neither assessment nor payment of a civil penalty shall affect your continuing obligation to comply with the Act or any other federal, state or local law or regulation.

6/29/99
Date


Margaret M. Guerriero, Acting Director
Air and Radiation Division
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, Illinois 60604

In the Matter of Lucas Sumitomo Brakes, Inc.
Docket No.

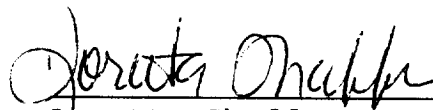
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U.S. PRO

CERTIFICATE OF SERVICE

I, Loretta Shaffer, certify that I hand delivered the original of the foregoing Administrative Complaint to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed correct copies, along with a copy of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," 40 C.F.R. Part 22, and a copy of the Penalty Policy (described in the Complaint) by first-class, postage prepaid, certified mail, return receipt requested, to the Respondent or Respondent's Counsel by placing it in the custody of the United States Postal Service addressed as follows:

on the 30th day of JUNE, 1999.



Loretta Shaffer
AECAS (MN/OH)

CERTIFIED MAIL RECEIPT NUMBER: P 140 777 316